

EXHIBIT 4

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UNITED STATES DISTRICT COURT

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DISTRICT OF MASSACHUSETTS

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In Re: PHARMACEUTICAL
INDUSTRY AVERAGE WHOLESALE
PRICE LITIGATION

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MDL DOCKET NO.
CIVIL ACTION
01CV12257-PBS

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THIS DOCUMENT RELATES TO:
ALL ACTIONS

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R O U G H D R A F T T R A N S C R I P T

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VOLUME I

16

DEPOSITION OF

17

CHARLES DUARTE

18

NOVEMBER 15, 2005

19

CARSON CITY, Nevada

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REPORTED BY: STEPHANIE ZOLKOWSKI CCR 283
COMPUTER-ASSISTED TRANSCRIPTION BY: caseCATalyst

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FOR GLAXO SMITHKLINE: COVINGTON & BURLING
By: RONALD G. DOVE, JR., ESQ.
and
JASON R. LITOW, ESQ.
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FOR NORVATIS: KAYE SCHOLER
By: JERIMIAH FREI-PEARSON, ESQ.
Page 2

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E X H I B I T S

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Exhibit 001 Duarte Deposition Notice

Exhibit 002 Duarte NV 03714 to NV 03734

10 Exhibit 003 Duarte NV 03760 to NV 03793

Exhibit 004 Duarte Interrogatories

11 Exhibit 005 Duarte NV 04001 to NV04031

Exhibit 006 Duarte NV 03883

12 Exhibit 007 Duarte NV 03884 to NV 03885

Exhibit 008 Duarte NV 04061 to NV 04069

13 Exhibit 009 Duarte NV 04077 to NV 04078

Exhibit 010 Duarte Medicaid Action

14 Transmittal

Exhibit 011 Duarte Portion Medicare

15 Medicaid Guide

Exhibit 012 Duarte Memorandum 11-6-92

16 To Toby from Mitchell

17 Exhibit 013 Duarte Memorandum 5-31-96 to

Vladeck from Brown

18 Exhibit 014 Duarte Memorandum 4-10-97 to

Vladeck from Brown

19 Exhibit 015 Duarte Inspector General 10-03

Report

20 Exhibit 016 Duarte NV 00187 to NV 00228

Exhibit 017 Duarte Article Las Vegas Review

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1 BE IT REMEMBERED that on TUESDAY, the 15th day
 2 of NOVEMBER, 2005, at the hour of 9:10 AM of said day,
 3 at the offices of OFFICE OF THE ATTORNEY GENERAL, 100
 4 North Carson Street, Carson City, Nevada, before me,
 5 STEPHANIE ZOLKOWSKI, a notary public, personally
 6 appeared CHARLES DUARTE, who was by me first duly
 7 sworn and was examined as a witness in said cause.

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11 R O U G H D R A F T T R A N S C R I P T

12 CHARLES DUARTE,

13 called as a witness herein, having been

14 duly sworn, testified as follows:

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16 EXAMINATION

17 BY MR. DOVE:

18 Q Good morning, Mr. Duarte.

19 A Good morning.

20 Q My name is Ross Dove. I'm the attorney for
21 the drug company Glaxco Smithkline, one of the
22 Defendants in this action.

23 Would you please state your full name for the
24 record.

25 A Charles Duarte.

5

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1 Q How do you spell your last name?

2 A D-u-a-r-t-e.

3 Q And what is your current business address?

4 A 1100 East William Street, suite 101, Carson
5 City, Nevada 89701.

6 Q Have you ever been deposed before?

7 A Yes, I have.

8 Q On how many occasions?

9 A Two.

10 Q And what type of proceedings were those

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21 A I'm not sure what her reasons for contacting
22 me were.

23 Q Did she have any particular concerns about
24 the Nevada Medicaid program that she thought you were
25 the right person to try and fix?

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1 MS. BRECKENRIDGE: Objection.

2 You can go ahead and answer it's unlikely
3 I'll instruct you not to answer anything today. I do
4 need to preserve my objection.

5 THE WITNESS: I'm not sure I understand the
6 question could you repeat it.

7 BY MR. DOVE:

8 Q Reads it back, please.

9 (Record read.)

10 THE WITNESS: She didn't communicate to me
11 any concerns that she had about the program that she
12 wanted me to fix.

13 BY MR. DOVE:

14 Q You stated this earlier but again what is
15 your official job title now?

16 A I'm the administrator for the Division of
17 health care financing and policy.

18 And if I may I should probably go back to the
19 prior question about Miss Crawford concerns.

20 She didn't have concerns per se but had asked
21 me to fully develop the capacity the policy capacity
22 of the division stabilize staffing and develop an

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13 are presented here in the inquiry. Not all the
14 entirety of the time frame suggested.

15 Q When you say you're familiar with some
16 aspects during certain time frames maybe if you could
17 explain what aspects are you knowledgeable about and
18 what time periods are you knowledgeable about?

19 A I'm more familiar with the terms and use of
20 AWP, MAC, best price, Federal Supply Schedule and VA
21 schedule.

22 I am not sure what is meant by price, cost or
23 benchmark specifically the term how you're using the
24 term metric. And again my familiarity with these
25 issues is probably more in depth related to the time

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1 frame of my tenure as Nevada state Medicaid
2 administrator 2000 to the current time.

3 Q Are you knowledgeable regarding the items
4 listed in one d documents created by or received from
5 federal agencies or the national association of
6 Medicaid fraud control units, national association of
7 attorneys general or PAL relating to prices, costs or
8 reimbursements for pharmaceutical products from
9 January 1985 to the present?

10 A No. Not to any degree. I don't normally see
11 these publications. I'm not sure what PAL means.
12 Could you define that for me?

13 Q It's prescription access litigation I
14 believe.

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25 office.

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1 Q Are you knowledgeable regarding item one n,
2 Defendants alleged use of free goods, samples,
3 educational grants, off-invoice price inducements or
4 other incentives to providers to purchase Defendants
5 drugs?

6 A Not directly.

7 Q Who would be knowledgeable about that topic?

8 A I don't know for certain. I've heard it
9 discussed by physicians in the community, by
10 pharmacists. But nothing that I can say is factual.
11 Just what they told me.

12 Q Moving onto item 2 a are you familiar with --
13 knowledgeable regarding the data concerning
14 reimbursements to providers for the purchase of
15 subjects drugs?

16 A Yes.

17 Can I clarify something?

18 Q Sure.

19 A As administrator I am responsible for policy
20 and overall administration of the division. I'm not
21 the ID manager. I'm not the claims administrator for
22 pharmacy benefits. Those kind of detail level of
23 information probably is best sought from staff that do
24 that directly.

25 Q In going through these questions if there's

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23 Q Do you know who the Deputy administrator of
24 Nevada Medicaid was in 1986?
25 A I do not.

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1 Q Do you know who the chef of Nevada Medicaid
2 was in 1986?
3 A I do not.
4 Q Do you know who the pharmaceutical consultant
5 was in 1986 for Nevada Medicaid?
6 A I do not.
7 MR. TERRY: Laurie Squartsoff.
8 THE WITNESS: Was it Laurie Squartsoff?
9 MR. TERRY: I'm pretty sure it is.
10 THE WITNESS: Could we take a break?
11 MR. DOVE: Sure.
12 (Recess.)
13 MR. DOVE: I would like to mark as Exhibit 3
14 a document bates labeled NV 03760 entitled State of
15 Nevada Department of human resources division of
16 health care financing policy authorized records
17 retention and disposition schedules June 9, 2004.
18 (Exhibit number 3 marked for identification.)
19 BY MR. DOVE:
20 Q I ask the witness if you could please
21 identify that document.
22 A I have seen it before.
23 Q Is this the document retention policy that is
24 currently in effect?
25 A I believe so, yes.

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1 Q Is this the same policy that was in effect
2 when Nevada filed it's lawsuit in this case?

3 A I'm not sure when the lawsuit was filed.

4 Q Filed in 2002.

5 A Some aspects of it were revised after that
6 time frame. But for the most part policies remained
7 the same.

8 Q Do you know in particular certain changes
9 that have been made since that time?

10 A I don't know the specific changes that were
11 made.

12 Q Does the State keep copies of it's prior
13 document retention policies?

14 A Not to my knowledge.

15 Q I know in discussion with counsel earlier
16 today plaintiff's will be producing either a draft or
17 an earlier version of this policy to Defendants. We
18 would certainly ask if there are other policies that
19 were in effect during any time from 1991 to the
20 present we with ask those be produced.

21 MS. BRECKENRIDGE: For the record we have
22 produced what we were able to find this morning.
23 we're not going to produce it. We did produce it. I
24 produce a bates stamp copy next week but we provided
25 your colleague what I believe is a draft of this

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1 policy. You're welcome to ask the witnesses questions
2 about our efforts to find these policies but we have
3 searched for them more than one and this is what we
4 could find.

5 BY MR. DOVE:

6 Q Who is primarily responsible for administering
7 the document retention policy?

8 A Primarily it falls to our administrative
9 assistants, our secretarial staff to make sure records
10 are retained in that property yet manner consistent
11 with policy. Each individuals also has individuals
12 hall so has responsibility to make sure records are
13 retained according to schedule.

14 Q Are you aware of any instance in your
15 division where an individual has been found to have
16 violated the document retention policy?

17 A Not to my knowledge.

18 Q Does this document retention policy cover
19 electronic document including email?

20 A I do not believe it does.

21 Q Is there a policy in place that does cover
22 electronic document such as email?

23 A Not to my knowledge.

24 MR. DOVE: whoever is typing if they could
25 please put that on mute. Thanks.

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1 BY MR. DOVE:

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2 Q Turn to page NV 03761 under the section
3 labeled disposition holds include litigation.

4 Do you see that?

5 A Yes, I do.

6 MS. BRECKENRIDGE: What was the page number?

7 THE WITNESS: Here.

8 BY MR. DOVE:

9 Q This section on disposition holds requires an
10 agency to take certain steps to preserve documents
11 when it learns of litigation is such a hold in effect
12 as a result of this case.

13 A I don't believe that we have specifically put
14 a hold on that. But we have not issued a specific
15 order to put a hold on that.

16 Q So specifically the first sentence under the
17 section entitled litigation states when an agency
18 received notification that a lawsuit has been filed
19 against or in behalf of them they should immediately
20 consult their legal counsel and/or the Attorney
21 General's office.

22 A We have done so.

23 Q Second section states that all records
24 pertaining to the litigation should be identified
25 separated from other file and protected.

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1 A We have done that.

2 Q Third sentence says all destruction of
3 records pertaining to the lawsuit must be stopped

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4 until the legal action has been resolved.

5 A We have done that.

6 Q Has the division issued any sort of notice to
7 the personnel division regarding this litigation and
8 the responsibility of each person regarding retaining
9 documents while the litigation is pending?

10 A Not specifically on retention of documents
11 other than a what we have here. But with respect to
12 the two prior sentences we're were asked to provide
13 and I have assigned specific staff to document all the
14 requested information and provide it through counsel
15 to you. We have done so and I believe we retained
16 records I mean copies of those as well.

17 Q What assurances would Defendants have that
18 documents that relate to subject matter of the
19 litigation but yet fall outside the time periods in
20 this document retention policy are being are
21 nevertheless being maintained?

22 A Let me make sure I understand the question.
23 Are you asking me whether I can provide assurance that
24 all documentation associated with the lawsuit going
25 back to the period in question 1985 were complied

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1 with?

2 Q Yes.

3 A I don't know.

4 Q Do you know who would know that answer?

5 A No, I do not.

6 MS. BRECKENRIDGE: Other than counsel?

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7 MR. DOVE: Other than counsel, yes.

8 BY MR. DOVE:

9 Q Turn to page NV 03762, the section entitled
10 hearings files provider complaints.

11 What specific types of documents would fall
12 into this category?

13 A Besides specific hearings files? I'm sorry.
14 This would involve providers who are filing a
15 complaint related to a policy or a reimbursement.

16 Q So if a pharmacy complained about
17 reimbursement rates for example, that letter would be
18 retained for at least six years is that right?

19 A If they requested it -- if they indicate it
20 as an appeal then yes.

21 Q They indicate it's a formal appeal then yes
22 but if it were an informal letter complaining about a
23 particular reimbursement rate?

24 A We may or may not have treated it as an
25 appeal.

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1 Q Moving to page 3764 under rate development
2 data base what specific documents data are included
3 under this category?

4 A Fortunately this is an outdated policy from
5 the standpoint that we no longer use Quatro and
6 Paradox software we now use Medicaid management
7 information system for the development of utilization
8 transit forecast patterns and utilization variables

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9 that lead to better development of rates.

10 Additionally there is a set of other
11 documents that we retain more relate to cost
12 information provided by facilities or providers that
13 we are providing categories that we're researching for
14 rate development.

15 Q would this category include any studies or
16 data relating to reimbursement rate for prescription
17 drugs?

18 A It could.

19 Q If it did such data or document would need to
20 be retained for minimum of six calendar years?

21 A Correct.

22 Q Certainly from Defendants perspective any
23 such information would have to be retained because
24 it's relevant to the litigation and thus fall under
25 the litigation hold but we can leave that there.

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1 If you could turn to page 3778 under the
2 category Medicaid reimbursements what specific
3 document or data would be included under that
4 category?

5 A These would be files related to -- these are
6 more related to expenditure reports that that we
7 develop in the fiscal area also reports to the federal
8 government related to some of our Medicaid
9 expenditures. This could also include files for
10 specific providers of provider categories for which
11 rate policies and reimbursement methods have been

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12 revised or updated.

13 Q Could this include information relating to
14 prescription drug reimbursement?

15 A It could.

16 Q Turn with me to page 3780. Specifically the
17 category at the top label NDC codes medical supplies.
18 Do you see that?

19 A Yes.

20 Q Do the medical supplies refer to in this
21 category would they include or could they include
22 prescription drugs?

23 A Not to my knowledge.

24 Q When it's talking about a unit AWP price and
25 this category is talking about an AWP for a supply?

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1 A I believe so, yes.

2 Q And then if you could turn with me to 3786
3 and to the category titled provider files do you see
4 that?

5 A Yes, sir.

6 Q What documents are included in this category?

7 A I think the documents are spelled out there I
8 could recite them.

9 Q There's no need to recite those.

10 Would these document include contracts with
11 pharmacies and physicians? It appears that they
12 might.

13 A Yes.

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14 Q would this category include complaints from
15 providers or physicians?

16 A I don't believe so.

17 Q If you could turn to page 3789 to the
18 category entitled state plan. Do you see that?

19 A Yes.

20 Q What specific document would be included
21 under this category?

22 A The State plan.

23 Q Would that include any amendments to the
24 plan?

25 A Yes.

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1 Q With that include amendments that would
2 relate to changes to reimbursement rates?

3 A If it required a change to the State plan,
4 yes.

5 Q Where are the state archives located that are
6 referenced in this category?

7 A I don't know their address but they're in
8 Carson City.

9 Q Do you know if the state archives were
10 searched for document responsive to Defendants request
11 in this case?

12 A I believe so but probably be best to address
13 that question to John Liveratti.

14 Q Is Mr. Liveratti responsible for organizing
15 the search for response for document in Defendants
16 request?

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17 A Yes. Some aspects of it. I had Miss
18 Lawrence responsibility for a specific areas where she
19 may have records in her unit. As well as working with
20 personnel services to provide additional information.
21 But John was response for primarily the archives
22 search which is and any searches within our own agency
23 files.

24 Q Going back to page 3778 for a minute under
25 Medicaid reimbursement you may have said this I want

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1 to be clear, would this category include electronic
2 claims data?

3 A I don't believe so.

4 Q Medicaid reimbursements?

5 MS. BRECKENRIDGE: I must have missed the
6 page number.

7 MR. DOVE: 3778.

8 THE WITNESS: Again I don't know I'm not sure
9 if it includes claims data.

10 BY MR. DOVE:

11 Q I believe you said earlier you didn't know if
12 there was a policy but just to be clear does the State
13 Avenue current retention policy for internal
14 electronic document such as email words processing
15 document spread sheets or electronic presentations?

16 A No we do not have a policy.

17 Q Has this always been the case since you have
18 been at Nevada Medicaid?

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19 A Yes.
20 Each individual is responsible for retention
21 on their own PC of records as far as they can what
22 they want to archive them. Each of us maintains
23 personnel archives of records but we only retain
24 several months of electronic records for email
25 transactions within the agency.

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1 Q Have personnel within the agency been
2 instructed to retain all electric income documents
3 including email words processing document that are
4 responsive to Defendants document requests in this
5 case?

6 A They were not instructed so but they were
7 instructed to provide all information they had
8 available to Mr. Liveratti in order to provide counsel
9 and you with that information.

10 Q Has any global search of the email system
11 been conducted for document responsive to Defendants
12 discovery requests?

13 A I don't believe so.

14 Q Has any --

15 A It may have actually. I'm not certain.

16 Q John Liveratti would be the one to ask that
17 question?

18 A Or Mr. Rosenberg.

19 Q What's the states retention policy with
20 regard to documents and data relating to the Medicaid
21 rebate program?

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22 A I don't know specifically as relates to
23 rebates. My recollection was we keep that information
24 for up to six years. We may have some other
25 information archived. But I'm not certain.

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1 Q Earlier we talked about the public employee
2 benefits funds. Do you recall that testimony?

3 A Yes.

4 Q Do employees of the division of health care
5 policy and financing do they receive their
6 prescription drug benefits through the public
7 employees plan?

8 A If they elect to enroll in the public
9 employee plan then yes.

10 Q Do they have any other options?

11 A Some may. Some may that be eligible because
12 of part time employment. Some May have other options
13 through their spouse or otherwise.

14 Q Earlier you had listed for me certain state
15 agencies and other states affiliated entities that
16 either purchased prescription drugs or were involved
17 in the reimbursement of prescription drugs.

18 Do you recall that testimony?

19 A Yes.

20 Q I would like to go back to some of those
21 agencies and ask you a few more questions about that.
22 You mentioned the State pharmacy assistance
23 program.